

AN ACT

relating to the sex offender civil commitment program and to the creation of a state agency to perform the functions relating to the sex offender civil commitment program that are currently performed by the Council on Sex Offender Treatment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1389 to read as follows:

Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) The Office of Violent Sex Offender Management is entitled to obtain from the department criminal history record information that is maintained by the department and that relates to a person who has applied with the office to be:

(1) an employee of the office; or

(2) a contracted service provider with the office.

(b) Criminal history record information obtained by the Office of Violent Sex Offender Management under Subsection (a) may not be released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) The Office of Violent Sex Offender Management shall destroy criminal history record information obtained under Subsection (a) as soon as practicable after the date on which, as

1 applicable:

2 (1) the person's employment or contract with the
3 office terminates; or

4 (2) the office decides not to employ or contract with
5 the person.

6 SECTION 2. Subtitle B, Title 4, Government Code, is amended
7 by adding Chapter 420A to read as follows:

8 CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

9 Sec. 420A.001. DEFINITIONS. In this chapter:

10 (1) "Board" means the governing board of the Office of
11 Violent Sex Offender Management.

12 (2) "Office" means the Office of Violent Sex Offender
13 Management.

14 Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) The Office of
15 Violent Sex Offender Management is a state agency.

16 (b) The office is governed by a board composed of the
17 following three members appointed by the governor:

18 (1) one member experienced in the management of sex
19 offenders;

20 (2) one member experienced in the investigation or
21 prosecution of sex offenses; and

22 (3) one member experienced in counseling or advocating
23 on behalf of victims of sexual assault.

24 (c) Members of the board serve staggered two-year terms.
25 Two members' terms expire February 1 of each even-numbered year and
26 one member's term expires February 1 of each odd-numbered year.

27 (d) A member of the board is entitled to travel expenses

incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations provided for members of state boards and commissions in the General Appropriations Act.

Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves at the discretion of the governor.

(b) The board shall meet at least quarterly and at other times at the call of the presiding officer.

Sec. 420A.004. SUNSET PROVISION. The Office of Violent Sex Offender Management is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2023.

Sec. 420A.005. GRANTS AND DONATIONS. On behalf of the state, the office may apply for and accept grants and donations from any source to be used by the office in the performance of the duties of the office.

Sec. 420A.006. PUBLIC INTEREST INFORMATION. The office shall prepare information of public interest describing the functions of the office and the procedures by which complaints are filed with and resolved by the office. The office shall make the information available to the public and appropriate state agencies.

Sec. 420A.007. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the office shall submit to the governor, the lieutenant governor, and the speaker of the house of

1 representatives a report concerning the operation of the office.
2 The office may include in the report any recommendations that the
3 office considers appropriate.

4 Sec. 420A.008. STAFF. The office may select and employ a
5 general counsel, staff attorneys, and other staff necessary to
6 perform the office's functions.

7 Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS.

8 (a) The board shall adopt a salary career ladder for case
9 managers. The salary career ladder must base a case manager's
10 salary on the manager's classification and years of service with
11 the office.

12 (b) For purposes of the salary schedule, the office shall
13 classify all case manager positions as Case Manager I, Case Manager
14 II, Case Manager III, Case Manager IV, or Case Manager V.

15 (c) Under the salary career ladder adopted under Subsection
16 (a), a case manager to whom the schedule applies and who received an
17 overall evaluation of at least satisfactory in the case manager's
18 most recent annual evaluation is entitled to an annual salary
19 increase, during each of the case manager's first 10 years of
20 service in a designated case manager classification as described by
21 Subsection (b), equal to one-tenth of the difference between:

22 (1) the case manager's current annual salary; and

23 (2) the minimum annual salary of a case manager in the
24 next highest classification.

25 Sec. 420A.010. POWERS AND DUTIES. The office shall perform
26 appropriate functions related to the sex offender civil commitment
27 program provided under Chapter 841, Health and Safety Code,

including functions related to the provision of treatment and supervision to civilly committed sex offenders.

Sec. 420A.011. ADMINISTRATIVE ATTACHMENT; SUPPORT.

(a) The office is administratively attached to the Department of State Health Services.

(b) The Department of State Health Services shall provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the office as necessary to carry out the purposes of this chapter.

(c) The office, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for the Department of State Health Services and is used to develop the office's budget structure. The office shall maintain the office's legislative appropriations request and budget structure separately from those of the department.

SECTION 3. Subdivisions (3) and (4), Section 841.002, Health and Safety Code, are amended to read as follows:

(3) "Case manager" means a person employed by or under contract with the office [~~council~~] to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(4) "Office" [~~"Council"~~] means the Office of Violent Sex Offender Management [~~Council on Sex Offender Treatment~~].

SECTION 4. Section 841.007, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER
3 MANAGEMENT [~~COUNCIL ON SEX OFFENDER TREATMENT~~]. The Office of
4 Violent Sex Offender Management [~~Council on Sex Offender Treatment~~]
5 is responsible for providing appropriate and necessary treatment
6 and supervision through the case management system.

7 SECTION 5. Subsections (b) and (c), Section 841.021, Health
8 and Safety Code, are amended to read as follows:

9 (b) Before the person's anticipated discharge date, the
10 [~~Texas~~] Department of State Health Services [~~Mental Health and~~
11 ~~Mental Retardation~~] shall give to the multidisciplinary team
12 established under Section 841.022 written notice of the anticipated
13 discharge of a person who:

14 (1) is committed to the department after having been
15 adjudged not guilty by reason of insanity of:

16 (A) a sexually violent offense described by
17 Section 841.002(8)(A), (B), or (C); or

18 (B) what is, or as described by this chapter what
19 the department reasonably believes may be determined to be, a
20 sexually violent offense described by Section 841.002(8)(D); and

21 (2) may be a repeat sexually violent offender.

22 (c) The Texas Department of Criminal Justice or the [~~Texas~~]
23 Department of State Health Services [~~Mental Health and Mental~~
24 ~~Retardation~~], as appropriate, shall give the notice described by
25 Subsection (a) or (b) not later than the first day of the 16th month
26 before the person's anticipated release or discharge date, but
27 under exigent circumstances may give the notice at any time before

1 the anticipated release or discharge date. The notice must contain
2 the following information:

3 (1) the person's name, identifying factors,
4 anticipated residence after release or discharge, and criminal
5 history;

6 (2) documentation of the person's institutional
7 adjustment and actual treatment; and

8 (3) an assessment of the likelihood that the person
9 will commit a sexually violent offense after release or discharge.

10 SECTION 6. Subsection (a), Section 841.022, Health and
11 Safety Code, is amended to read as follows:

12 (a) The executive director of the Texas Department of
13 Criminal Justice and the commissioner of the [Texas] Department of
14 State Health Services [~~Mental Health and Mental Retardation~~]
15 jointly shall establish a multidisciplinary team to review
16 available records of a person referred to the team under Section
17 841.021. The team must include:

18 (1) one person [~~two persons~~] from the [Texas]
19 Department of State Health Services [~~Mental Health and Mental~~
20 ~~Retardation~~];

21 (2) two persons from the Texas Department of Criminal
22 Justice, one of whom must be from the victim services office of that
23 department;

24 (3) one person from the [Texas] Department of Public
25 Safety; [and]

26 (4) two persons from the office [~~council~~] or office
27 [~~council~~] personnel; and

(5) one person from the Council on Sex Offender Treatment.

SECTION 7. Section 841.023, Health and Safety Code, is amended to read as follows:

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY.

(a) Not later than the 60th day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the ~~[Texas]~~ Department of State Health Services ~~[Mental Health and Mental Retardation]~~, as appropriate, shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment, the department required to make the assessment shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment.

(b) If as a result of the assessment the Texas Department of Criminal Justice or the ~~[Texas]~~ Department of State Health Services ~~[Mental Health and Mental Retardation]~~ believes that the person suffers from a behavioral abnormality, the department making the assessment shall give notice of that assessment and provide corresponding documentation to the attorney representing the state not later than the 60th day after the date of a recommendation under Section 841.022(c).

SECTION 8. Subsections (a) and (c), Section 841.082, Health and Safety Code, are amended to read as follows:

1 (a) Before entering an order directing a person's
2 outpatient civil commitment, the judge shall impose on the person
3 requirements necessary to ensure the person's compliance with
4 treatment and supervision and to protect the community. The
5 requirements shall include:

6 (1) requiring the person to reside in a Texas
7 residential facility under contract with the office [~~council~~] or at
8 another location or facility approved by the office [~~council~~];

9 (2) prohibiting the person's contact with a victim or
10 potential victim of the person;

11 (3) prohibiting the person's possession or use of
12 alcohol, inhalants, or a controlled substance;

13 (4) requiring the person's participation in and
14 compliance with a specific course of treatment provided by the
15 office and compliance with all written requirements imposed by the
16 case manager or otherwise by the office;

17 (5) requiring the person to:

18 (A) submit to tracking under a particular type of
19 tracking service and to any other appropriate supervision; and

20 (B) refrain from tampering with, altering,
21 modifying, obstructing, or manipulating the tracking equipment;

22 (6) prohibiting the person from changing the person's
23 residence without prior authorization from the judge and from
24 leaving the state without that prior authorization;

25 (7) if determined appropriate by the judge,
26 establishing a child safety zone in the same manner as a child
27 safety zone is established by a judge under Section 13B, Article

1 42.12, Code of Criminal Procedure, and requiring the person to
2 comply with requirements related to the safety zone; and

3 (8) ~~[requiring the person to notify the case manager~~
4 ~~immediately but in any event within 24 hours of any change in the~~
5 ~~person's status that affects proper treatment and supervision,~~
6 ~~including a change in the person's physical health or job status and~~
7 ~~including any incarceration of the person; and~~

8 ~~[(9)]~~ any other requirements determined necessary by
9 the judge.

10 (c) The judge shall provide a copy of the requirements
11 imposed under Subsection (a) to the person and to the office
12 ~~[council]~~. The office ~~[council]~~ shall provide a copy of those
13 requirements to the case manager and to the service providers.

14 SECTION 9. Section 841.083, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 841.083. TREATMENT; SUPERVISION. (a) The office
17 ~~[council]~~ shall approve and contract for the provision of a
18 treatment plan for the committed person to be developed by the
19 treatment provider. A treatment plan may include the monitoring of
20 the person with a polygraph or plethysmograph. The treatment
21 provider may receive annual compensation in an amount not to exceed
22 \$10,000 ~~[\$6,000]~~ for providing the required treatment.

23 (b) The case manager shall provide supervision to the
24 person. The provision of supervision must ~~[shall]~~ include a
25 tracking service and, if required by court order, supervised
26 housing.

27 (c) The office ~~[council]~~ shall enter into appropriate

1 memoranda of understanding with the [Texas] Department of Public
2 Safety for the provision of a tracking service and with the
3 Department of Public Safety and local law enforcement authorities
4 for assistance in the preparation of criminal complaints, warrants,
5 and related documents and in the apprehension and arrest of a
6 person.

7 ~~[(c-1) Notwithstanding Subsection (c) or any other~~
8 ~~provision of this subchapter, the council shall provide through the~~
9 ~~case management system any supervision or tracking service required~~
10 ~~under this chapter for persons residing in Dallas, Harris, or~~
11 ~~Tarrant County. The council shall provide the tracking service~~
12 ~~under this subsection through two employees of the Department of~~
13 ~~State Health Services. Any tracking personnel used by the~~
14 ~~department for purposes of this chapter must be approved by the~~
15 ~~council.~~

16 ~~[(c-2) If the equipment necessary to implement the tracking~~
17 ~~service is available through a contract entered into by the~~
18 ~~comptroller, the Department of Public Safety or the council, as~~
19 ~~appropriate, shall acquire that equipment through that contract.]~~

20 (d) The office [council] shall enter into appropriate
21 memoranda of understanding for any necessary supervised housing.
22 The office [council] shall reimburse the applicable provider for
23 housing costs under this section. ~~[The committed person may not be~~
24 ~~housed for any period of time in a mental health facility, state~~
25 ~~school, or community center, unless the placement results from a~~
26 ~~commitment of the person to that facility, school, or center by~~
27 ~~governmental action. In this subsection,~~

1 ~~[(1) "Community center" means a center established~~
2 ~~under Subchapter A, Chapter 534.~~

3 ~~[(2) "Mental health facility" has the meaning assigned~~
4 ~~by Section 571.003.~~

5 ~~[(3) "State school" has the meaning assigned by~~
6 ~~Section 531.002.]~~

7 (e) The case manager shall:

8 (1) coordinate the outpatient treatment and
9 supervision required by this chapter, including performing a
10 periodic assessment of the success of that treatment and
11 supervision;

12 (2) make timely recommendations to the judge on
13 whether to allow the committed person to change residence or to
14 leave the state and on any other appropriate matters; and

15 (3) provide a report to the office ~~[council]~~,
16 semiannually or more frequently as necessary, which must include:

17 (A) any known change in the person's status that
18 affects proper treatment and supervision; and

19 (B) any recommendations made to the judge.

20 SECTION 10. Section 841.084, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding
23 Section 841.146(c), a civilly committed person who is not indigent
24 is responsible for the cost of the tracking service required by
25 Section 841.082 and monthly shall pay to the office ~~[council]~~ the
26 amount that the office ~~[council]~~ determines will be necessary to
27 defray the cost of operating the service with respect to the person

1 during the subsequent month. The office [~~council~~] immediately
2 shall transfer the money to the appropriate service provider.

3 SECTION 11. Section 841.101, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 841.101. BIENNIAL EXAMINATION. (a) A person
6 committed under Section 841.081 shall receive a biennial
7 examination. The office [~~council~~] shall contract for an expert to
8 perform the examination.

9 (b) In preparation for a judicial review conducted under
10 Section 841.102, the case manager shall provide a report of the
11 biennial examination to the judge. The report must include
12 consideration of whether to modify a requirement imposed on the
13 person under this chapter and whether to release the person from all
14 requirements imposed on the person under this chapter. The case
15 manager shall provide a copy of the report to the office [~~council~~].

16 SECTION 12. Section 841.141, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 841.141. RULEMAKING AUTHORITY. (a) The office
19 [~~council~~] by rule shall administer this chapter. Rules adopted by
20 the office [~~council~~] under this section must be consistent with the
21 purposes of this chapter.

22 (b) The office [~~council~~] by rule shall develop standards of
23 care and case management for persons committed under this chapter.

24 SECTION 13. Subsections (c) and (d), Section 841.142,
25 Health and Safety Code, are amended to read as follows:

26 (c) On the written request of any attorney for another state
27 or for a political subdivision in another state, the Texas

1 Department of Criminal Justice, the office [~~council~~], a service
2 provider contracting with one of those agencies, the
3 multidisciplinary team, and the attorney representing the state
4 shall release to the attorney any available information relating to
5 a person that is sought in connection with an attempt to civilly
6 commit the person as a sexually violent predator in another state.

7 (d) To protect the public and to enable an assessment or
8 determination relating to whether a person is a sexually violent
9 predator or to enable the provision of supervision and treatment to
10 a person who is a sexually violent predator, the Texas Department of
11 Criminal Justice, the office [~~council~~], a service provider
12 contracting with one of those agencies, the multidisciplinary team,
13 and the attorney representing the state may exchange any available
14 information relating to the person.

15 SECTION 14. Section 841.147, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 841.147. IMMUNITY. The following persons are immune
18 from liability for good faith conduct under this chapter:

19 (1) an employee or officer of the Texas Department of
20 Criminal Justice, the Department of State Health Services, the
21 Department of Aging and Disability Services, or the office
22 [~~council~~];

23 (2) a member of the multidisciplinary team established
24 under Section 841.022;

25 (3) an employee of the civil division of the special
26 prosecution unit charged with initiating and pursuing civil
27 commitment proceedings under this chapter; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

SECTION 15. Subsection (a), Section 841.150, Health and Safety Code, is amended to read as follows:

(a) The duties imposed by this chapter are suspended for the duration of any confinement of a person, or if applicable any other commitment of a person to a community center, mental health facility, or state school, by governmental action.

SECTION 16. Subchapter H, Chapter 841, Health and Safety Code, is amended by adding Section 841.151 to read as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) This section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating:

(1) a civil commitment requirement imposed under Section 841.082; or

(2) a law of this state.

(c) Not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention

1 facility releases a person who, at the time of the person's
2 detention or confinement, was civilly committed under this chapter
3 as a sexually violent predator, the facility shall notify the
4 person's case manager in writing of the anticipated date and time of
5 the person's release.

6 (d) A case manager, on request, shall provide a correctional
7 facility, a secure correctional facility, or a secure detention
8 facility with the case manager's appropriate contact information
9 for notification under Subsection (c).

10 SECTION 17. The following are transferred to the Office of
11 Violent Sex Offender Management:

12 (1) the functions of the Council on Sex Offender
13 Treatment that relate to the sex offender civil commitment program;

14 (2) the director of the Department of State Health
15 Services who has jurisdiction over the sex offender civil
16 commitment program; and

17 (3) the staff of the council whose primary duties
18 include the operation of the sex offender civil commitment program.

19 SECTION 18. As soon as possible after the effective date of
20 this Act, the governor shall appoint three members to the governing
21 board of the Office of Violent Sex Offender Management.

22 SECTION 19. (a) The Office of Violent Sex Offender
23 Management, the Department of State Health Services, and the
24 Council on Sex Offender Treatment shall coordinate the transfer of
25 functions relating to the sex offender civil commitment program as
26 required by this Act.

27 (b) The transfer of all functions relating to the sex

1 offender civil commitment program to the Office of Violent Sex
2 Offender Management shall be accomplished as soon as possible but
3 not later than the 90th day after the date the last member of the
4 governing board of the Office of Violent Sex Offender Management
5 qualifies for office.

6 (c) The transfer required by this Act includes the transfer
7 of all assets, duties, powers, obligations, and liabilities,
8 including contracts, leases, real or personal property, funds,
9 employees, furniture, computers and other equipment, and files and
10 related materials used by the Department of State Health Services
11 and the Council on Sex Offender Treatment in performing the
12 functions relating to the sex offender civil commitment program
13 that are transferred by this Act. For purposes of this subsection,
14 "employees" includes the executive director of the Council on Sex
15 Offender Treatment and administrative technicians and program
16 specialists employed by the council.

17 (d) A form, rule, or procedure adopted by the Health and
18 Human Services Commission or the Department of State Health
19 Services in relation to the Council on Sex Offender Treatment that
20 is in effect on the effective date of this Act remains in effect on
21 and after that date as if adopted by the Office of Violent Sex
22 Offender Management until amended, repealed, withdrawn, or
23 otherwise superseded by that office.

24 (e) All unexpended appropriations for functions relating to
25 the sex offender civil commitment program that are made for use by
26 the Department of State Health Services or the Council on Sex
27 Offender Treatment are transferred to the Office of Violent Sex

1 Offender Management.

2 (f) The Office of Violent Sex Offender Management shall
3 publish in the Texas Register the date on which the transfer of
4 functions under this Act is accomplished.

5 SECTION 20. After the effective date of this Act, the
6 Council on Sex Offender Treatment shall continue to perform
7 applicable functions until the transfer of functions required by
8 this Act is completed, and the laws providing for those functions
9 are continued in effect for that purpose.

10 SECTION 21. This Act takes effect September 1, 2011.

S.B. No. 166

David Dewhurst
President of the Senate

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 166 passed the Senate on March 29, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2011, by the following vote: Yeas 31, Nays 0.

Atsuy Grew
Secretary of the Senate

I hereby certify that S.B. No. 166 passed the House, with amendment, on May 19, 2011, by the following vote: Yeas 146, Nays 2, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

17 JUN '11

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4pm O'CLOCK

JUN 17 2011

Debra R. Ralston
Secretary of State